

FILED

AUG 31 2010

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

HENRY WILDS,

Plaintiff,

v.

DONALD GINES, et al.,

Defendants.

No. C 08-03348 CW (PR)

ORDER GRANTING PLAINTIFF A
LIMITED EXTENSION OF TIME TO
FILE OPPOSITION TO DEFENDANTS'
DISPOSITIVE MOTION; AND SETTING
SCHEDULING ORDER

(Docket nos. 19, 22)

Plaintiff has filed a request for an extension of time, up to and including ninety days from the original deadline of August 23, 2010, in which to file his opposition to Defendants' motion for summary judgment, on the grounds that he would like to engage in discovery. Defendants oppose Plaintiff's request for a ninety-day extension, and ask the Court to "deny, or in the alternative, limit, the plaintiff's request for an enlargement of time to file an opposition." (Defs.' Opp'n to Pl.'s Mot. for EOT at 3.)

Having read and considered Plaintiff's request and the accompanying declaration as well as Defendants' opposition, the Court GRANTS IN PART Plaintiff's request for an extension of time in order to engage in discovery before filing his opposition to Defendants' motion for summary judgment. (Docket nos. 19, 22). The Court denies Plaintiff's request for a ninety-day extension from the original deadline of August 23, 2010. Instead, the Court GRANTS Plaintiff a limited extension of time to file his opposition. Because Plaintiff has already been given a sixty-day deadline from the date Defendants' motion for summary judgment was

1 filed to submit his opposition, the deadline for Plaintiff's
2 opposition will be extended up to and including October 25, 2010.

3 Discovery may be taken in accordance with the Federal Rules of
4 Civil Procedure. No further court order under Federal Rule of
5 Civil Procedure 30(a)(2) or Local Rule 16-1 is required before the
6 parties may conduct discovery. For Plaintiff's information, the
7 proper manner of promulgating discovery is to send demands for
8 documents or interrogatories (questions asking for specific,
9 factual responses) directly to Defendants' counsel. See Fed. R.
10 Civ. P. 33-34. The scope of discovery is limited to matters
11 "relevant to the claim or defense of any party Relevant
12 information need not be admissible at trial if the discovery
13 appears reasonably calculated to lead to the discovery of
14 admissible evidence." Fed. R. Civ. P. 26(b)(1). Discovery may be
15 further limited by court order if "(i) the discovery sought is
16 unreasonably cumulative or duplicative, or is obtainable from some
17 other source that is more convenient, less burdensome, or less
18 expensive; (ii) the party seeking discovery has had ample
19 opportunity by discovery in the action to obtain the information
20 sought; or (iii) the burden or expense of the proposed discovery
21 outweighs its likely benefit." Fed. R. Civ. P. 26(b)(2).

22 The Court ORDERS the parties to abide by the following
23 scheduling order to complete discovery and to file pleadings as
24 outlined below:

25 1. Plaintiff must serve Defendants with any additional
26 discovery demands no later than September 7, 2010.

1 2. Defendants should serve their responses and/or objections
2 to Plaintiff's discovery demands no later than September 21, 2010.

3 3. If Plaintiff's discovery requests are denied, Plaintiff
4 may move to compel discovery no later than October 8, 2010.

5 4. In order to expedite the resolution of this case, the
6 Court further orders as follows:

7 a. Plaintiff's opposition to the Defendants' motion for
8 summary judgment shall be filed with the Court and served on
9 Defendants no later than October 25, 2010. The Ninth Circuit has
10 held that the following notice should be given to pro se plaintiffs
11 facing a summary judgment motion:

12 The defendants have made a motion for
13 summary judgment by which they seek to have
14 your case dismissed. A motion for summary
15 judgment under Rule 56 of the Federal Rules
16 of Civil Procedure will, if granted, end
17 your case.

18 Rule 56 tells you what you must do in order
19 to oppose a motion for summary judgment.
20 Generally, summary judgment must be granted
21 when there is no genuine issue of material
22 fact--that is, if there is no real dispute
23 about any fact that would affect the result
24 of your case, the party who asked for
25 summary judgment is entitled to judgment as
26 a matter of law, which will end your case.
27 When a party you are suing makes a motion
28 for summary judgment that is properly
supported by declarations (or other sworn
testimony), you cannot simply rely on what
your complaint says. Instead, you must set
out specific facts in declarations,
depositions, answers to interrogatories, or
authenticated documents, as provided in
Rule 56(e), that contradict the facts shown
in the defendant's declarations and
documents and show that there is a genuine
issue of material fact for trial. If you
do not submit your own evidence in
opposition, summary judgment, if
appropriate, may be entered against you.
If summary judgment is granted in favor of

defendants, your case will be dismissed and there will be no trial.

See Rand v. Rowland, 154 F.3d 952, 963 (9th Cir. 1998) (en banc). Plaintiff is advised to read Rule 56 of the Federal Rules of Civil Procedure. Plaintiff is cautioned that because he bears the burden of proving his allegations in this case, he must be prepared to produce evidence in support of those allegations when he files his opposition to Defendants' dispositive motion. Such evidence may include sworn declarations (statements of fact within the personal knowledge of the person making the statement, with an affirmation that the contents of the statement are true, signed under penalty of perjury) from himself and other witnesses to the incident, and copies of documents authenticated by sworn declaration, see Fed. R. Evid. 901(b)(1), or by other appropriate means, see Fed. R. Evid. 901-03. Plaintiff will not be able to avoid summary judgment simply by repeating the allegations of his complaint.

b. If Defendants wish to file a reply brief, they shall do so no later than fifteen (15) days after the date Plaintiff's opposition is filed.

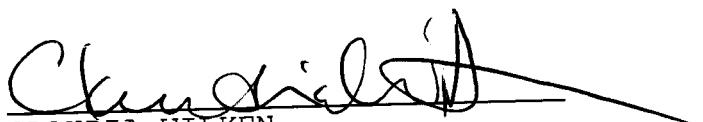
c. The motion shall be deemed submitted as of the date the reply brief is due. No hearing will be held on the motion unless the Court so orders at a later date.

5. No further extensions of time will be granted absent exigent circumstances.

6. This Order terminates Docket nos. 19 and 22.

IT IS SO ORDERED.

DATED: **AUG 31 2010**


CLAUDIA WILKEN
United States District Judge